

# **Exhibit 1**

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10 MARKMONITOR, INC.  
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275 Battery Street, Suite 2000  
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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF VIRGINIA  
10

11 SONY MUSIC ENTERTAINMENT, et al. ) CASE NO. 18-CV-00950-LO-JFA  
12 Plaintiffs, )  
13 vs. )  
14 COX COMMUNICATIONS, INC. and )  
15 COXCOM LLC, )  
16 Defendants. )  
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**NONPARTY MARKMONITOR,  
INC.'S OBJECTIONS AND  
RESPONSE TO COX  
COMMUNICATIONS, INC. AND  
COXCOM LLC'S MAY 10, 2019  
SUBPOENA TO TESTIFY IN A CIVIL  
ACTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE BE ADVISED that Nonparty MARKMONITOR, INC. ("MMI" or "Responding Non Party") submits the following written objections to Defendant Cox Communications, Inc. and CoxCom LLC's May 10, 2019 Subpoena to Testify in a Civil Action ("Subpoena"), pursuant to Federal Rule of Civil Procedure ("FRCP") 45. Through meet and confer efforts, counsel for MMI and Cox have modified the Subpoena, in part, but Cox has not served an Amended or Modified Subpoena (or deposition notice) to address those modifications. As such, MMI responds to the original Subpoena, subject to the informal modifications and agreements reached to date.

**GENERAL OBJECTIONS**

1. As required by the Subpoena, MMI is directed to "designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf

1 about the following matters, or those set forth in an attachment,” and is then directed to “See  
 2 Attachment A.” In accordance with that directive, MMI has identified for Cox four persons to  
 3 testify on its behalf regarding the 10 topics of examination, including (a) Sam Bahun, who  
 4 resides and works in **Ohio**; (b) Curtis Eisenberger, who resides and works in **Idaho**; (c)  
 5 Slawomir Paszkowski, who resides and works in **Lithuania**; and (d) Jacob Svalastoga, who  
 6 resides and works in **Denmark**.

7       2.     In light of the residential and work locations of these corporate designees, MMI  
 8 objected to the Subpoena as being defective on the grounds that the proposed deposition date  
 9 (May 23, 2019), time (9:30 a.m.) and location (Veritext Legal Solutions, 334 S. Main St.,  
 10 Dayton, OH 45402) creates an undue burden and significant expense on the part of non-party  
 11 MMI and the non-party natural persons who would be testifying on MMI’s behalf. In serving  
 12 the Subpoena via email on May 10, 2019, the issuing party acknowledged that the location was  
 13 “to accommodate Mr. Bahun. However, we understand that MarkMonitor will likely be  
 14 designating additional witnesses in other locations, and Cox will ensure that those depositions  
 15 are taken within 100 miles of each and on a date and time convenient for those witnesses. We  
 16 are also happy to discuss alternative dates and times reasonably close to May 23 for Mr. Bahun’s  
 17 deposition if May 23 does not work.”

18       3.     Since service of the Subpoena, the parties have met and conferred on the date and  
 19 location for Mr. Bahun to testify. By agreement, the deposition for the areas of examination  
 20 upon which Mr. Bahun will testify, is set to take place on June 13, 2019 at Winston & Strawn’s  
 21 Los Angeles, California office, located at 333 S. Grand Avenue, Suite 3800, Los Angeles, CA  
 22 90071.

23       4.     In addition, on May 22, 2019, Cox’ counsel agreed that any dispute regarding the  
 24 Subpoena, or any need for judicial intervention, would be venued in the USDC (ND Cal.) before  
 25 U.S. Magistrate Judge Sallie Kim, who has already handled disputes regarding Cox’ various  
 26 subpoenas to MMI. During the meet and confer, Cox’ counsel further agreed to extend MMI’s  
 27 “time to seek protection from the court, though we do not think that will be necessary.” To date,  
 28 no motions have been filed.

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1           5.     During the week of June 3, 2019, counsel agreed that Mr. Bahun will be educated  
 2 by MMI to testify on matters originally intended to be addressed by Mr. Eisenberger, and that  
 3 “this eliminates the need for Cox to depose Mr. Eisenberger.”

4           6.     MMI has also made arrangements for Mr. Paszkowski to be educated, as  
 5 necessary, to address topics for examination that would have been addressed by Mr. Svalastoga.  
 6 However, he has not consented to and is unavailable to travel to the United States, and is  
 7 unavailable to testify for the balance of June and most of July due to prior work commitments  
 8 and his pre-planned vacation calendar. Cox has **not** made arrangements to depose him within the  
 9 geographical limitations set forth in FRCP 45, or as previously confirmed would be the case by  
 10 Cox. *See Par.2, supra.*

11           7.     MMI has advised Cox, as recently as June 6, 2019 that to take the deposition  
 12 within the requisite geographical limitations, Cox must comply with any procedures under “the  
 13 Hague Convention and local laws in Lithuania (and previously Denmark for Mr. Svalastoga)  
 14 [that] relate to the process by which the deposition (while noticed/subpoenaed under the FRCP)  
 15 can proceed in a foreign country or a citizen of that country.” To date, MMI has not been  
 16 provided with “any indication of your [Cox’] efforts to determine what protocol must be  
 17 followed, as well as to seek the requisite authorization, etc., to conduct the deposition of either of  
 18 these foreign witnesses within the applicable geographical limitations.” MMI has “have offered  
 19 to cooperate with a deposition by written questions under FRCP 31, but you [Cox] have rejected  
 20 that offer. MMI also agreed to “inquire as to Mr. Paszkowski’s ability to modify his calendar, if  
 21 at all possible, for a possible video deposition. However, any requirements under the Hague  
 22 Convention and local laws will still need to be addressed.”

23           8.     Cox’ counsel did not respond to MMI’s June 6 meet and confer communication,  
 24 which also addressed Cox’ repeated request for MMI to designate an alternate designee to testify  
 25 in place of Mr. Paszkowski in the United States. In the June 6 communication, MMI reminded  
 26 Cox that in addition to its “ability to select its own designee, we [MMI] have already informed  
 27 you, and the Court, that there are no qualified MarkMonitor representatives who live in the  
 28 United States that can answer questions regarding that subject matter, and that, as such, there are

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1 no representatives who can be educated to testify as MarkMonitor's designee. Judge Kim has  
 2 already ruled on this issue, so it is unclear why it is being revisited. Unlike the subject matter in  
 3 the *Wultz* case where the Court determined that a local witness could be educated on a non-  
 4 complex issue, Judge Kim has already expressly ruled that MarkMonitor does not have such  
 5 obligations with respect to this subject matter ("Source code") in this case:

6 Cox's suggestion that MarkMonitor comply with the subpoena by selecting alternative  
 7 designees is contrary to law. Cox contends that MarkMonitor has deliberately selected  
 8 designees who live and work far from its headquarter in order to avoid deposition. Cox  
 9 simultaneously suggests that, if MarkMonitor finds producing its designees burdensome,  
 10 it should designate and educate for deposition designees who can appear in the United  
 11 States. A nonparty corporate witness is entitled to designate persons to be deposed on its  
 12 behalf. *See McIntyre v. BF Capital Holding, LLC*, 2016 U.S. Dist. LEXIS 127873, \*4  
 13 ("an important facet of Rule 30(b)(6): the noticed organization is empowered with the  
 14 right – and obligation – to designate the person(s) to testify on its behalf.") It is  
 15 unreasonable for a nonparty witness to be forced to educate an alternative designee on a  
 16 highly technical topic such as source code. *See, e.g., In re Intel Corp.*, 2018 U.D. Dist.  
 17 LEXIS 81906, at \*1-4 (N.D. Cal. May 14, 2018) (holding that where "the source code at  
 18 issue is complicated" it is "unreasonable to expect [the third party corporate witness] to  
 19 educate another witness on technical topics"). Similarly, here, complex source code  
 20 forms a large part of the subject matter underlying the subpoena. The complexities of  
 21 testifying on such a technical topic make requiring a nonparty to educate an alternative  
 22 witness unreasonable.

23 *See Order Granting Motion to Quash* (dkt.31), filed May 9, 2019, p.4:10-23. The only two  
 24 witnesses qualified to testify as to the source code are Mr. Paszkowski and Mr. Svalastoga, and  
 25 Mr. Paszkowski can address all source code-related topic for examination, whereas Mr.  
 26 Svalastoga lacks historical knowledge regarding versions, revisions, etc. There are no alternative  
 27 choices." Again, there has been no response to the June 6 communication, which included an  
 28 inquiry on service of any further modified subpoena or deposition notice for June 13.

29 9. To date, with respect to witnesses other than Mr. Bahun, Cox has refused to take  
 30 any reasonable steps to avoid imposing such undue burden or expense on MMI (or the natural  
 31 persons). As such, the Subpoena is subject to motion to quash or modify under FRCP 45(d) on  
 32 the grounds that it fails to allow a reasonable time to comply (FRCP(d)(3)(A)(i)), requires a  
 33 person to appear beyond the geographical limits specified in Rule 45(c) (FRCP(d)(3)(A)(ii)); and  
 34 subjects a person to undue burden (and expense) (FRCP(d)(1), (3)(A)(iii)).

35 10. The Subpoena is also objectionable in that the topics listed for the scope of

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1 examination set forth below are vague, ambiguous, and overbroad, and compliance with the  
2 Subpoena within the time specified, in addition to the deposition location for designees other  
3 than Mr. Bahun, would be unduly burdensome, oppressive, time consuming, expensive, and  
4 harassing. The Subpoena also fails to describe the areas for examination with reasonable  
5 particularity.

6 11. MMI also objects on the grounds that the categories of examination seek  
7 information protected from disclosure under the attorney-client privilege and/or work product  
8 doctrine, as well as proprietary, trade secret and other confidential information.

9 12. In addition to privileges, much of the broad scope of the deposition areas of  
10 examination are not relevant to any party's claims or defenses, nor is the scope of the Subpoena  
11 reasonably calculated to lead to the discovery of admissible evidence in this action.

12 13. These objections are made without prejudice to MMI's supplement or amend  
13 these objections in the event that any information may have been omitted by oversight,  
14 inadvertence, or good faith error or mistake.

15 14. Except for the facts explicitly stated herein, no incidental or implied admissions  
16 are intended.

17 15. These objections are signed by counsel only as to the objections set forth in the  
18 responses, and MMI expressly reserves:

19 9.1 All objections regarding the competency, relevance, materiality, probative  
20 value and admissibility of all information provided, documents produced and the contents  
21 thereof;

22 9.2 All objections as to vagueness, ambiguity, unintelligibility and  
23 overbreadth.

24 16. Nothing herein shall be construed as an admission regarding the admissibility or  
25 relevance of any fact or document or of the truth or accuracy of any characterization contained in  
26 the document requests.

27 17. Any response herein should not be construed to be a waiver of any objection to  
28 the area of examination or any discovery request.

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1        18.     MMI responds to the areas of examination subject to the foregoing, and each of  
2 the foregoing statements and objections is incorporated by reference into each of the following  
3 responses:

## **RESPONSE TO TOPIC AREAS OF EXAMINATION**

## **5 | Area of Examination 1:**

6 Your process for searching for, reviewing, and producing Documents in response to  
7 Cox's Subpoena *duces tecum* served on January 9, 2019 (the "Document Subpoena")

## **8 | Objection/Response Area of Examination 1:**

9 Objection. The entire scope of this area of examination, and the defined and undefined  
10 terms and phrases “Your,” “process,” “searching for, reviewing, and producing” and  
11 “Documents” are vague, ambiguous, and subject to varying interpretations. The scope is also  
12 overbroad and compliance would be unduly burdensome, time consuming and expensive.  
13 Further, the scope seeks information that is not “relevant to any party’s claim or defense and  
14 proportional to the needs of the case” within the meaning of FRCP 26(b)(1). In addition, the  
15 area of examination seeks information protected from disclosure under the attorney-client  
16 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
17 proprietary, trade secret and other confidential information.

18 Without waiving and subject to said objections, this Responding Non Party states: MMI  
19 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
20 scope of this Area of Examination on June 13, 2019.

## 21 | Area of Examination 2:

22 Your retention policies as they relate to Documents, Your Systems, and any associated  
23 source code or technical materials.

## 24 | Objection/Response Area of Examination 2:

25 Objection. The entire scope of this area of examination, and the defined and undefined  
26 terms and phrases “Your,” “retention policies,” “as they relate to,” “Documents,” “Your  
27 Systems,” and “any associated source code or technical materials.” are vague, ambiguous, and  
28 subject to varying interpretations. The scope is also overbroad and compliance would be unduly

1 burdensome, time consuming and expensive. Further, the scope lacks foundation, assumes facts  
2 not in evidence, and seeks information that is not “relevant to any party’s claim or defense and  
3 proportional to the needs of the case” within the meaning of FRCP 26(b)(1). In addition, the  
4 area of examination seeks information protected from disclosure under the attorney-client  
5 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
6 proprietary, trade secret and other confidential information.

7 Without waiving and subject to said objections, this Responding Non Party states: MMI  
8 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
9 scope of this Area of Examination on June 13, 2019. MMI has designated Mr. Paszkowski to  
10 testify on its behalf regarding the relevant and non-privileged scope of this Area of Examination  
11 that may pertain to source code or computer engineering at a mutually agreeable date, time and  
12 location, subject to these objections and payment of witness fees and other expenses under FRCP  
13 45 and 28 U.S.C §1821. With respect to Mr. Paszkowski, his presentation as a witness for  
14 deposition is also completely subject to The Hague Convention and/or other applicable rules,  
15 regulations and restrictions on taking a foreign deposition in the country that is within the  
16 geographical limitations.

17 **Area of Examination 3:**

18 Your preservation of Documents and other materials responsive to the Document  
19 Subpoena, including the manner and extent to which Your System(s), revision history, and  
20 associated source code has been maintained and preserved from 2010 to the present.

21 **Objection/Response Area of Examination 3:**

22 Objection. The entire scope of this area of examination, and the defined and undefined  
23 terms and phrases “Your.” “preservation.” “Documents and other materials responsive to the  
24 Document Subpoena,” “the manner and extent to which,” “Your System(s),” “revision history,”  
25 “associated source code,” and “maintained and preserved” are vague, ambiguous, and subject to  
26 varying interpretations. The scope (and time) is also overbroad and compliance would be unduly  
27 burdensome, time consuming and expensive. Further, the scope lacks foundation, assumes facts  
28 not in evidence, and seeks information that is not “relevant to any party’s claim or defense and

1 proportional to the needs of the case" within the meaning of FRCP 26(b)(1). In addition, the  
 2 area of examination seeks information protected from disclosure under the attorney-client  
 3 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
 4 proprietary, trade secret and other confidential information.

5 Without waiving and subject to said objections, this Responding Non Party states: MMI  
 6 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
 7 scope of this Area of Examination on June 13, 2019. MMI has designated Mr. Paszkowski to  
 8 testify on its behalf regarding the relevant and non-privileged scope of this Area of Examination  
 9 that may pertain to source code or computer engineering at a mutually agreeable date, time and  
 10 location, subject to these objections and payment of witness fees and other expenses under FRCP  
 11 45 and 28 U.S.C §1821. With respect to Mr. Paszkowski, his presentation as a witness for  
 12 deposition is also completely subject to The Hague Convention and/or other applicable rules,  
 13 regulations and restrictions on taking a foreign deposition in the country that is within the  
 14 geographical limitations.

15 **Area of Examination 4:**

16 Your software revision policies from 2012 to the present, including any policies that  
 17 explain how revisions are made to software, where prior versions are stored, and how revisions  
 18 are to be documented.

19 **Objection/Response Area of Examination 4:**

20 Objection. The entire scope of this area of examination, and the defined and undefined  
 21 terms and phrases "Your," "software revision policies," "explain how revisions are made to  
 22 software," "prior versions," "stored," and "are to be documented" are vague, ambiguous, and  
 23 subject to varying interpretations. The scope is also overbroad and compliance would be unduly  
 24 burdensome, time consuming and expensive. Further, the scope lacks foundation, assumes facts  
 25 not in evidence, and seeks information that is not "relevant to any party's claim or defense and  
 26 proportional to the needs of the case" within the meaning of FRCP 26(b)(1). In addition, the  
 27 area of examination seeks information protected from disclosure under the attorney-client  
 28 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks

1 proprietary, trade secret and other confidential information.

2 Without waiving and subject to said objections, this Responding Non Party states: MMI  
3 has designated Slawomir Paszkowski to testify on its behalf regarding the relevant and non-  
4 privileged scope of this Area of Examination at a mutually agreeable date, time and location,  
5 subject to these objections and payment of witness fees and other expenses under FRCP 45 and  
6 28 U.S.C §1821, and completely subject to the Hague Convention and/or other applicable rules,  
7 regulations and restrictions on taking a foreign deposition in the country that is within the  
8 geographical limitations.

9 **Area of Examination 5:**

10 Your System's available Configurations during Plaintiffs' Claim Period.

11 **Objection/Response Area of Examination 5:**

12 Objection. The entire scope of this area of examination is vague, ambiguous, and subject  
13 to varying interpretations. The scope is also overbroad and compliance would be unduly  
14 burdensome, time consuming and expensive. Further, the scope lacks foundation, assumes facts  
15 not in evidence, and seeks information that is not "relevant to any party's claim or defense and  
16 proportional to the needs of the case" within the meaning of FRCP 26(b)(1). In addition, the  
17 area of examination seeks information protected from disclosure under the attorney-client  
18 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
19 proprietary, trade secret and other confidential information.

20 Without waiving and subject to said objections, this Responding Non Party states: MMI  
21 has designated Slawomir Paszkowski to testify on its behalf regarding the relevant and non-  
22 privileged scope of this Area of Examination at a mutually agreeable date, time and location,  
23 subject to these objections and payment of witness fees and other expenses under FRCP 45 and  
24 28 U.S.C §1821 and completely subject to the Hague Convention and/or other applicable rules,  
25 regulations and restrictions on taking a foreign deposition in the country that is within the  
26 geographical limitations.

27 **Area of Examination 6:**

28 Your anti-piracy services for the RIAA and/or any Plaintiff between 2010 and present,

1 including without limitation the services that resulted in notices being sent to Cox, and including  
2 the specific Configurations utilized by the RIAA as related to any Peer-to-Peer Notice Program.  
3 and RIAA's contracts with you and payments to you associate with such services.

4 **Objection/Response Area of Examination 6:**

5 Objection. The entire scope of this area of examination and the defined and undefined  
6 words and phrases "Your," "anti-piracy services for the RIAA and/or any Plaintiff," "the  
7 services that resulted in notices being sent to Cox," "the specific Configurations utilized by the  
8 RIAA," "related to any Peer-to-Peer Notice Program" and "and RIAA's contracts with you and  
9 payments to you associate with such services" are vague, ambiguous, and subject to varying  
10 interpretations. The scope is also overbroad and compliance would be unduly burdensome, time  
11 consuming and expensive. Further, the scope lacks foundation, assumes facts not in evidence,  
12 and seeks information not within this party's possession, custody, or control and/or which is  
13 equally available to propounding party from other sources and/or that is not "relevant to any  
14 party's claim or defense and proportional to the needs of the case" within the meaning of FRCP  
15 26(b)(1). In addition, the area of examination seeks information protected from disclosure under  
16 the attorney-client privilege and/or attorney work product doctrine. As phrased, the area of  
17 examination also seeks proprietary, trade secret and other confidential information.

18 Without waiving and subject to said objections, this Responding Non Party states: MMI  
19 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
20 scope of this Area of Examination on June 13, 2019.

21 **Area of Examination 7:**

22 Your services for CCI or in connection with the CAS.

23 **Objection/Response Area of Examination 7:**

24 Objection. The entire scope of this area of examination and the defined and undefined  
25 words and phrases "Your services," and "for CCI or in connection with the CAS" are vague,  
26 ambiguous, and subject to varying interpretations. The scope is also overbroad and compliance  
27 would be unduly burdensome, time consuming and expensive. The scope is also overbroad and  
28 compliance would be unduly burdensome, time consuming and expensive. Further, the scope

1 lacks foundation, assumes facts not in evidence, and seeks information not within this party's  
2 possession, custody, or control and/or which is equally available to propounding party from other  
3 sources and/or that is not "relevant to any party's claim or defense and proportional to the needs  
4 of the case" within the meaning of FRCP 26(b)(1). In addition, the area of examination seeks  
5 information protected from disclosure under the attorney-client privilege and/or attorney work  
6 product doctrine. As phrased, the area of examination is not relevant or calculated to lead to the  
7 discovery of admissible evidence and also seeks proprietary, trade secret and other confidential  
8 information.

9 Without waiving and subject to said objections, this Responding Non Party states: MMI  
10 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
11 scope of this Area of Examination on June 13, 2019.

12 **Area of Examination 8:**

13 The differences, if any, between Your System(s) utilized in connection with the CAS and  
14 to send infringement notices to Cox and between Your Systems used to target Residential ISP  
15 Customers and Non-Residential ISP Customers.

16 **Objection/Response Area of Examination 8:**

17 Objection. The entire scope of this area of examination and the defined and undefined  
18 words and phrases "The differences, if any," "Your System(s)," "utilized in connection with the  
19 CAS," "to send infringement notices to Cox," "used to target," and "Residential ISP Customers  
20 and Non-Residential ISP Customers" are vague, ambiguous, and subject to varying  
21 interpretations. The scope is also overbroad and compliance would be unduly burdensome, time  
22 consuming and expensive. Further, the scope calls for speculation, lacks foundation, assumes  
23 facts not in evidence, and seeks information that is not "relevant to any party's claim or defense  
24 and proportional to the needs of the case" within the meaning of FRCP 26(b)(1). In addition, the  
25 area of examination seeks information protected from disclosure under the attorney-client  
26 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
27 proprietary, trade secret and other confidential information.

28 Without waiving and subject to said objections, this Responding Non Party states: MMI

1 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
2 scope of this Area of Examination on June 13, 2019.

3 **Area of Examination 9:**

4 The processes and methods by which Your System generated and/or sent notices of  
5 claimed infringement to Cox or any of Cox's subscribers, account holders, or customers in  
6 connection with alleged infringement of the Copyright Works, including, without limitation the  
7 "evidence packages" You produced in this litigation as Bates No. MM000306.

8 **Objection/Response Area of Examination 9:**

9 Objection. The entire scope of this area of examination, and the defined and undefined  
10 terms and phrases "The processes and methods by which," "Your System," "generated and/or  
11 sent notices of claimed infringement," "to Cox or any of Cox's subscribers, account holders, or  
12 customers" and "in connection with alleged infringement of the Copyright Works" are vague,  
13 ambiguous, and subject to varying interpretations. The scope is also overbroad and compliance  
14 would be unduly burdensome, time consuming and expensive. Further, the scope is  
15 argumentative, lacks foundation and assumes facts not in evidence. In addition, the area of  
16 examination seeks information protected from disclosure under the attorney-client privilege  
17 and/or attorney work product doctrine. As phrased, the area of examination also seeks  
18 proprietary, trade secret and other confidential information.

19 Without waiving and subject to said objections, this Responding Non Party states: MMI  
20 has designated Samuel Bahun and Slawomir Paszkowski to testify on its behalf regarding the  
21 relevant and non-privileged scope of this Area of Examination at a mutually agreeable date, time  
22 and location, subject to these objections and payment of witness fees and other expenses under  
23 FRCP 45 and 28 U.S.C §1821. Mr. Bahun will testify on June 13, 2019. With respect to Mr.  
24 Paszkowski, his presentation as a witness for deposition is also completely subject to The Hague  
25 Convention and/or other applicable rules, regulations and restrictions on taking a foreign  
26 deposition in the country that is within the geographical limitations.

27 **Area of Examination 10:**

28 Analyses, reviews, assessments, criticisms, or critiques of Your System(s), including but

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1 not limited to and Your responses thereto.

2 **Objection/Response Area of Examination 20:**

3 Objection. The entire scope of this area of examination and the defined and undefined  
4 words and phrases “Analyses, reviews, assessments, criticisms, or critiques,” “Your System(s),”  
5 and “Your responses thereto” are vague, ambiguous, and subject to varying interpretations. The  
6 scope is also overbroad and compliance would be unduly burdensome, time consuming and  
7 expensive. Further, the scope is argumentative, calls for speculation, lacks foundation, assumes  
8 facts not in evidence, and seeks information that is not “relevant to any party’s claim or defense  
9 and proportional to the needs of the case” within the meaning of FRCP 26(b)(1). In addition, the  
10 area of examination seeks information protected from disclosure under the attorney-client  
11 privilege and/or attorney work product doctrine. As phrased, the area of examination also seeks  
12 proprietary, trade secret and other confidential information.

13 Without waiving and subject to said objections, this Responding Non Party states: MMI  
14 has designated Samuel Bahun to testify on its behalf regarding the relevant and non-privileged  
15 scope of this Area of Examination on June 13, 2019.

16  
17 Dated: June 12, 2019

GORDON REES SCULLY MANSUKHANI, LLP



18  
19 By: \_\_\_\_\_  
20 Andrew D. Castricone  
21 Attorneys for Nonparty  
22 MARKMONITOR, INC.  
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8 Attorneys for NonParty  
9 MARKMONITOR, INC.

10

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF VIRGINIA

13

14 SONY MUSIC ENTERTAINMENT, et al. ) CASE NO. 18-CV-00950-LO-JFA  
15 Plaintiffs, )  
16 vs. ) CERTIFICATE OF SERVICE OF:  
17 COX COMMUNICATIONS, INC. and ) Nonparty MarkMonitor, Inc.'s Objections  
18 COXCOM LLC, ) and Responses to May 10, 2019 Subpoena  
19 Defendants. ) to Testify in a Civil Action

20 I am a resident of the State of California, over the age of eighteen years, and not a party  
21 to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 275 Battery  
22 Street, Suite 2000, San Francisco, CA 94111.

23 On June 12, 2019 I served the document listed below:

24

25 **NONPARTY MARKMONITOR, INC.'S OBJECTIONS AND RESPONSE TO COX  
26 COMMUNICATIONS, INC. AND COXCOM LLC'S MAY 10, 2019 SUBPOENA TO  
27 TESTIFY IN A CIVIL ACTION**

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- by transmitting via facsimile the document(s) listed above to the fax number(s) set  
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1 below, addressed as follows:

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postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America that the  
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